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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-49**

12 **CLAUDIA MARIE MILLER**  
13 **4942 E. Glenview Avenue**  
14 **Anaheim, CA 92807**

**A C C U S A T I O N**

15 **Registered Nurse License No. 429574**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered  
24 Nurse License Number 429574 to Claudia Marie Miller (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on November 30, 2011, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
2 and the board may inquire into the circumstances surrounding the commission of the crime in  
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
6 'registration.'"

7 9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an  
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11 ". . . .

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
14 conclusive evidence thereof.

15 ". . . ."

16 10. Section 2762 of the Code states:

17 "In addition to other acts constituting unprofessional conduct within the meaning of this  
18 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
19 chapter to do any of the following:

20 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
21 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
22 administer to another, any controlled substance as defined in Division 10 (commencing with  
23 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
24 defined in Section 4022.

25 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
26 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
27 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
28

1 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
2 ability to conduct with safety to the public the practice authorized by his or her license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
4 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
5 or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof.

8 "...."

9 11. Section 2765 of the Code states:

10 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
11 charge substantially related to the qualifications, functions and duties of a registered nurse is  
12 deemed to be a conviction within the meaning of this article. The board may order the license or  
13 certificate suspended or revoked, or may decline to issue a license or certificate, when the time  
14 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
15 order granting probation is made suspending the imposition of sentence, irrespective of a  
16 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person  
17 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict  
18 of guilty, or dismissing the accusation, information or indictment."

## 19 REGULATIONS

20 12. California Code of Regulations, title 16, section 1444, states:

21 "A conviction or act shall be considered to be substantially related to the qualifications,  
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
24 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

25 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in  
26 subdivision (d) of Penal Code Section 11160.

27 "(b) Failure to comply with any mandatory reporting requirements.

28 "(c) Theft, dishonesty, fraud, or deceit.

1       “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the  
2 Penal Code.”

3       13. California Code of Regulations, title 16, section 1445 states:

4       “....

5       “(b) When considering the suspension or revocation of a license on the grounds that a  
6 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such  
7 person and his/her eligibility for a license will consider the following criteria:

8       “(1) Nature and severity of the act(s) or offense(s).

9       “(2) Total criminal record.

10       “(3) The time that has elapsed since commission of the act(s) or offense(s).

11       “(4) Whether the licensee has complied with any terms of parole, probation, restitution or  
12 any other sanctions lawfully imposed against the licensee.

13       “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the  
14 Penal Code.

15       “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

#### 16                                   **COST RECOVERY**

17       14. Section 125.3 of the Code provides that the Board may request the administrative law  
18 judge to direct a licensee found to have committed a violation or violations of the licensing act to  
19 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### 20                                   **FIRST CAUSE FOR DISCIPLINE**

21                               **(May 21, 2008, Conviction for DUI on March 7, 2008)**

22       15. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
23 subdivision (f), on the grounds that she was convicted of a crime that is substantially related to  
24 her qualifications, functions and duties as a registered nurse. The circumstances are as follows:

25       a. On May 21, 2008, in a criminal case entitled *The People of the State of California v.*  
26 *Claudia Marie Miller*, Orange County Superior Court, North Justice Center case number  
27 08NM03661, Respondent was charged with violating Health and Safety Code section 11550,  
28 subdivision (a), being under the influence of a controlled substance and Vehicle Code

1 section 23152, subdivision (a), driving under the influence of alcohol. As a result of a plea  
2 bargain, the complaint was amended and Respondent pled guilty to driving under the influence of  
3 drugs, a violation of Vehicle Code section 23152, subdivision (a).

4 b. The facts that led to this conviction are that on March 7, 2008, Respondent rearended  
5 another car while driving westbound on Orangethorpe Avenue approaching Lakeview Avenue in  
6 Anaheim. In an interview of Respondent she said that she bent over to pickup her water cup and  
7 her passenger yelled at her that another vehicle was stopped in front of them. As Respondent  
8 looked up and slammed on her brakes she rearended another vehicle. A second officer contacted  
9 Respondent and he saw her sitting in the right front passenger seat going through her wallet.  
10 Respondent told the officer that she was looking for her driver's license and vehicle registration.  
11 The officer told Respondent that she already gave another officer her driver's license and vehicle  
12 registration, and she just starred at him with a confused look in her eyes. The officer noticed that  
13 Respondent's speech was slow and slurred when he spoke to Respondent she told the officer she  
14 had taken a Vicodin pill before she had started driving and had not slept in four days. Respondent  
15 was arrested for violation of Vehicle Code section 23152, subdivision (a), driving under the  
16 influence of a controlled substance.

17 c. As a result of the conviction, Respondent was sentenced to 3 years of informal  
18 probation, ordered to obey all laws, orders, rules, and regulations of the Court, Jail, and  
19 Probation, not to drink and drive, submit to a chemical test of blood, breath, or urine upon  
20 demand of any peace officer or probation officer, not to drive without a valid driver's license,  
21 registration and insurance, use her true name and date of birth, disclose terms and conditions of  
22 probation when asked by any law enforcement or probation officer, pay various fines and fees,  
23 pay restitution to the victim, serve 1 day in Orange County Jail with credit for 1 day served,  
24 complete a 3 month Level 1 First Offender Alcohol Program, and to obey all rules of the program  
25 and not to leave the program without court approval.

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**SECOND CAUSE FOR DISCIPLINE**

**(Using Alcohol to a Dangerous Extent)**

16. Respondent's license is subject to discipline under Code section 2762, subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is set forth in paragraph 15, above, which is incorporated by this reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Criminal Conviction Involving the Consumption of Alcohol)**

17. Respondent's license is subject to discipline under Code section 2762, subdivision (c), in that Respondent was convicted of a criminal offense involving the consumption of alcohol as is set forth in paragraph 15, above, which is incorporated by this reference.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 429574, issued to Claudia Marie Miller;
2. Ordering Claudia Marie Miller to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

*7/15/10*

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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